

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 GREAT AMERICAN INSURANCE  
11 COMPANY,

12 v.  
13 Plaintiff,

14 RODGER MAY, *et al.*,

15 Defendants.

16 CASE NO. C21-1002-JCC

17 ORDER

18 This matter comes before the Court on Defendants' joint motion to stay (Dkt. No. 14).

19 Having considered the parties' briefing and the relevant record, the Court hereby GRANTS the  
20 motion for the reasons explained herein.

21 **I. BACKGROUND**

22 This declaratory judgment coverage action follows a dispute over, amongst other things,  
23 intellectual property generated in a salvage operation for the *S.S. Islander*, a passenger vessel  
24 thought to be carrying gold that sank off the coast of Southeast Alaska. (See Dkt. Nos. 14 at 3–5,  
25 21 at 2–3.) Defendants formed a joint venture to salvage the gold and, in fact, did just that in  
26 2012. (*Id.*) But they elected to go their separate ways before completing their efforts. (*Id.*) In  
negotiating a wind-down of their arrangement, the parties were unable to come to terms over  
ownership of the intellectual property, *i.e.*, the treasure map, generated during the salvage

1 operation. (*Id.*) In 2019, Defendant Rodger May sued MK Salvage Venture, LLC, Bear  
 2 Enterprises, LLC, and Peter Kuttel, his codefendants in this action, in King County Superior  
 3 Court. (*See* Dkt. No. 1-1 at 42–48 (Case Scheduling Order for *May v. MK Salvage Venture LLC, et al.*, King County Cause No. 19-2-10613-1 SEA).)

5 They reached a settlement of Mr. May’s claims in December 2020. (*See generally* Dkt.  
 6 No. 15-1). The settlement includes a proposed \$30 million covenant judgment and an assignment  
 7 of rights in certain policies written by Plaintiff Great American Insurance Company to Mr. May.  
 8 (*Id.* at 8–9.) However, that covenant judgment is subject to approval by the King County  
 9 Superior court pursuant to Wash. Rev. Code § 4.22.060, which has not yet occurred. (*See* Dkt.  
 10 No. 15 at 2.) Until it does, the settlement cannot be finalized.

11 Great American filed the instant action in this Court in July 2021. (Dkt. No. 1.) It seeks a  
 12 declaratory judgment that the policies to be assigned to Mr. May do not provide coverage for any  
 13 of the claims brought by him or his associates in the salvage venture. (*Id.* at 5.) Defendants in  
 14 this action moved to stay this proceeding until the King County Superior Court renders its  
 15 reasonableness decision on the covenant judgment, arguing that the issues in the two cases are  
 16 substantially similar and, absent a stay, they would be harmed if forced to defend this action  
 17 while also engaging in the action before the King County Superior Court. (*See generally* Dkt.  
 18 No. 14.)

19 **II. DISCUSSION**

20 “The power to grant a stay in pending litigation is incidental to the power inherent in  
 21 every court to control the disposition of the cases on its docket.” *Landis v. North Am. Co.*, 299  
 22 U.S. 248, 254–55 (1936). “The proponent of a stay bears the burden of establishing its need.”  
 23 *Clinton v. Jones*, 520 U.S. 681, 708 (1997). Defendants have satisfied their burden.

24 As a threshold matter, the parties quibble over whether the issues at play in the King  
 25 County Superior Court proceeding are substantially similar to those in this proceeding.  
 26 (*Compare* Dkt. No. 21 at 6–7, *with* 26 at 4–5.) The Court FINDS that they are. Specifically, the

1 King County Superior Court action may clarify or even moot key issues in the instant action. For  
 2 example, if the King County Superior Court reduces the judgment below \$7.5 million, Mr. May  
 3 can void the settlement agreement. (See Dkt. No. 15-1 at 9.) Should that occur, and he chooses to  
 4 move forward with his suit against his former colleagues and loses, Great American would have  
 5 no damages to pay under the policies in question in this suit. This alone is sufficient to establish  
 6 substantially similar issues between the two suits. *See Ali v. Trump*, 241 F. Supp. 3d 1147, 1152  
 7 (W.D. Wash. 2017); *Jinni Tech Ltd. v. RED.com, Inc.*, 2018 WL 5312200, slip op. at 3 (W.D.  
 8 Wash. 2018).

9         However, in deciding whether to grant a stay, the Court must also consider “the possible  
 10 damage which may result from the granting of a stay, the hardship or inequity which a party may  
 11 suffer in being required to go forward, and the orderly course of justice measured in terms of the  
 12 simplifying or complicating of issues, proof, and questions of law which could be expected to  
 13 result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Here, each factor  
 14 weighs in favor of granting the requested stay.

15         1.         Damage that May Result from a Stay

16         Defendants are seeking a relatively short stay. The hearing on the reasonableness of the  
 17 covenant judgment is presently scheduled for December 3, 2021, with a decision anticipated  
 18 either concurrently or shortly thereafter. (See Dkt. No. 26 at 4.) This means Defendants are  
 19 asking for a stay of something less than three months. The Court strains to understand how a stay  
 20 of this duration would harm Great American. Therefore, the Court FINDS that this factor  
 21 supports the stay.

22         2.         Hardship or Inequity Suffered by Proceeding

23         Conversely, Defendants would suffer a hardship if forced to proceed here prior to  
 24 learning of the King County Superior Court’s decision regarding the covenant judgment. For one  
 25 thing, MK Salvage Venture LLC, Bear Enterprises, LLC, and Peter Kuttel are all named  
 26 defendants in this suit and must presently bear the expense of defending. (See Dkt. No. 1.) If the

1 King County Superior Court approves the proposed covenant judgment, those parties would no  
2 longer have an interest in the policies, and the expense of defending this suit would fall solely to  
3 Mr. May. For this reason, the Court FINDS that this factor supports the stay.

4       3.     The Orderly Course of Justice

5       Finally, if defendants in the King County action are forced to litigate this suit before  
6 learning of the King County Superior Court's reasonableness determination, they likely would  
7 need to take inconsistent positions in the two suits. Namely, for purposes of the instant suit, it is  
8 in their interest to argue that the intellectual property was damaged at some point, thereby  
9 potentially triggering coverage under Great American's policies. Whereas, it is in those  
10 defendant's interest in the King County suit to argue that the property is not damaged, as it is an  
11 asset to be transferred to Mr. May pursuant to their settlement agreement. (See Dkt. No. 15-1 at  
12 11–12.) A stay would eliminate the possibility of these inconsistent positions. This would, in  
13 turn, reduce the collective burden on the courts to resolve disputed issues. For this reason, the  
14 Court FINDS that this factor also supports a stay.

15 **III. CONCLUSION**

16       For the foregoing reasons, the Court GRANTS Defendants' joint motion to stay (Dkt. No.  
17 14). The Court hereby STAYS this case until the King County Superior Court has issued its  
18 reasonableness determination in *May v. MK Salvage Venture LLC, et al.*, King County Cause  
19 No. 19-2-10613-1 SEA. Once that occurs, the parties are ORDERED to submit a joint status  
20 report to the Court within fifteen days. That joint status report should include a proposed revised  
21 case management schedule, including a briefing schedule for Great American's outstanding  
22 summary judgment motion (Dkt. No. 16).

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1 DATED this 1st day of October 2021.  
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7 John C. Coughenour  
8 UNITED STATES DISTRICT JUDGE  
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